

Remarks

In response to the Restriction Requirement, Applicant has elected Group I and species elections as recited above. This election embraces at least claims 1-4, 7-12, 14, 17-21, 23, 28-33 and 44.

This election is made with traverse on the basis that Groups I and II and Groups I and III should be rejoined for the reasons set forth below.

The Examiner bases the Restriction of Groups I and III on the fact that the product (Group I) and process of using (Group III) are distinct since the process of using as claimed can be practiced with another materially different product and/or the product as claimed can be used in a materially different process. However, the Examiner has not met her burden under MPEP 806.05(h) as she has not provided examples of an alternative viable use for the composition of claim 1 or an alternative viable product to be used in claims 46 and 98. Moreover, Applicant respectfully points out that the product of claim 1 is the same as that recited in claims 46 and 98. In the interest of expediting prosecution, Applicant herewith amends claims 46 and 98 to depend from claim 1. Accordingly, there is no basis for at least the position that the process of using can be practiced with another materially different product.

Applicant further points out that, even if claims are distinct, there must still be a serious burden on the Examiner in order to justify their restriction. Applicant maintains that no serious burden exists, since the common element in the claims of Groups I and III is the immunostimulatory nucleic acid comprising a nucleotide sequence of SEQ ID NO:1.

Applicant further requests rejoinder of Groups I and III under MPEP 821.04 which states that "Where product and process claims drawn to independent and distinct inventions are presented in the same application, ... if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all limitations of the allowable product claim will be rejoined". As stated above, claims 46 and 98 now depend from claim 1 and thus should be considered for rejoinder once claim 1 is found allowable.

Accordingly, Applicant requests reconsideration and rejoinder of Groups I and III now, or alternatively rejoinder once the claims of Group I are found allowable, provided Group III claims depend from or otherwise include all the limitations of allowable Group I claims.

Applicant further traverses the Restriction on the basis that there is no serious burden on the Examiner to consider Groups I and II together under MPEP 808.02. The Examiner has classified both Groups in class 536. The Examiner has provided no evidence for the separate status of Groups I and II in the art, and a search of Group I is expected to identify art relevant to Group II and vice versa, particularly since the common element of Groups I and II is an immunostimulatory nucleic acid comprising a nucleotide sequence of SEQ ID NO:1. The Examiner is requested to reconsider and rejoin Groups I and II for at least these reasons.

Having made this election, Applicant expressly reserves the right to file one or more divisional applications on the subject matter of the unelected claims.

Summary

If the Examiner has any questions and believes that a telephone conference with Applicant's representative would prove helpful in expediting the prosecution of this application, the Examiner is urged to call the undersigned at (617) 646-8266.

Respectfully submitted,
Krieg, Applicant



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